

**VIRGINIA BOARD OF DENTISTRY
MINUTES
MARCH 12, 2010**

TIME AND PLACE: The meeting of the Board of Dentistry was called to order at 9:05 A.M. on March 12, 2010 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Jeffrey Levin, D.D.S., President

BOARD MEMBERS PRESENT: Jacqueline G. Pace, R.D.H., Vice President
Robert B. Hall, Jr. D.D.S., Secretary-Treasurer
Herbert R. Boyd, III, D.D.S.
Martha C. Cutright, D.D.S.
Meera A. Gokli, D.D.S.
Myra Howard, Citizen Member
Misty Mesimer, R.D.H.
Augustus A. Petticolas, Jr. D.D.S.
Paul N. Zimmet, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director for the Board
Diane Powers, DHP Communications Director
Alan Heaberlin, Deputy Executive Director for the Board
Huong Vu, Administrative Assistant

OTHERS PRESENT: Howard M. Casway, Senior Assistant Attorney General

ESTABLISHMENT OF A QUORUM: All members of the Board were present.

PUBLIC COMMENT: **William J. Bennett, D.D.S.**, addressed his concerns regarding dentists advertising themselves as specialists when the specialty is not recognized and regarding superiority claims. He stated that despite having filed complaints, the Board has not corrected what he believes are clear violations of the regulations. He asked the Board to establish and enforce clear rules for advertising.

APPROVAL OF MINUTES: Dr. Levin asked if the Board members had reviewed the minutes in the agenda package. Dr. Petticolas moved to accept the minutes of the December 3, 2009 meeting. The motion was seconded and carried.

Dr. Hall moved to accept the minutes of the December 4, 2009 meeting. The motion was seconded and carried.

DHP DIRECTOR'S REPORT:

Dr. Levin stated that Ms. Ryals was not able to attend. Ms. Reen added that Mr. Heaberlin would address DHP Performs in his report and she will report on legislation later in the agenda.

HEALTH PRACTITIONERS' MONITORING PROGRAM (HPMP):

Dr. Ziegler, HPMP Medical Director – gave a Power Point presentation on the following topics:

- the new name of the program,
- monitoring as an alternative to discipline action,
- HPMP operation,
- stay procedure,
- current scope of the program,
- HPMP staff,
- how participants are referred,
- monitoring components,
- drug monitoring
- report to MPC/Board
- grounds for dismissal,
- readmission following dismissal, and
- current projects in development.

Dr. Ziegler introduced Ms. Grant, the case manager for dental participants and Peggy Wood, the DHP program manager and liaison, as she responded to questions about participation at proceedings, how to obtain program input when the Board is addressing return to practice, the role of case managers and the selection of practice monitors.

REPORTS:

Board of Health Professions (BHP). Dr. Zimmet reported he was not at the February 9 meeting and that there was not a quorum to conduct business due to the snow storm.

AADB. Dr. Levin reported that the Board was not represented at the last AADB meeting in Hawaii and that he and Ms. Reen would be attending the April meeting in Chicago.

SCDDE. Dr. Levin reported that he attended the Southern Conference of Dean and Dental Examiners meeting in Washington D.C. last month where the age of electronic technology was discussed.

VCU School of Dentistry. Dr. Levin then reported that Dean Hunt left his post on March 12, 2010 and that Dr. Sarrett, the associate vice president for health sciences, is serving as the interim dean pending the appointment of a new dean. He added that CODA conducted a site visit at the school which went well with no recommendations for changes being made.

SRTA. Dr. Gokli reported that she attended the board of directors meeting on January 22, 2010 in D.C. where:

- a budget report showing the agency to be in good financial shape was received,
- compensating observers at the same rate as examiners was approved,
- dismissing examiners who test below the calibration standard was approved, and
- allowing associate members from Georgia to continue to examine for SRTA was approved.

Dr. Gokli then asked Ms. Pace to report on the dental hygiene mock board conducted by the Dental Hygiene Committee. Ms. Pace stated that examiners participated in the mock board to learn how to apply changes that were made to the dental hygiene examination by SRTA's Board of Directors at the annual meeting in August 2009. The mock board was held on March 6, 2010 and the following aspects of the exam were reviewed and tested:

- standardization
- case entry
- check in
- final evaluation, and
- PDA software.

Ms. Pace added that the mock board may be conducted annually due to the evolving nature of the exam.

Regulatory/Legislative Committee. Ms. Howard reported the internal review of parts VI and VII of the regulations has been completed and is recommending that the Board adopt the NOIRA for regulatory review which will be addressed later in the agenda. She said the Committee is working to create clear and user friendly regulations for the professions and the public.

LEGISLATION AND REGULATION:

Ms. Reen noted that she is filling in for Ms. Yeatts who was unable to be at the meeting today.

Report on 2010 Legislative. Ms. Reen reported the following bills directly affect the work of the Board or the practice of dentistry:

- HB 308 (Regulation of mobile dental clinics) – was requested by the VDA to have this requirement from the 2009 Appropriations Act included in statute in order to continue the Board's oversight.
- HB 1263 (Payment for services by dentist and oral surgeon) – requires insurance companies to limit fee provisions in contracts to the services covered in their dental plan.
- HB 662 (General powers and duties of health regulatory boards) – adds provisions for acceptance of surrender of a license in lieu of disciplinary action.

Review of Regulatory Actions Chart. Ms. Reen reported that:

- the proposed draft for final regulations for the registration of mobile clinics is on the agenda for adoption.
- the proposed draft of the final regulations for the registration and practice of dental assistants is also on the agenda for adoption.
- the regulations for recovery of disciplinary costs are under administrative review at the Secretary's office then will go to the Governor's office before they can be published for public comment.

Adoption of Regulations for Dental Assistants II. Ms. Reen referred the Board's attention to the public hearing transcript, the letter and proposed language from the Virginia Dental Hygienist Association (VDHA), the summary of all public comment, and the draft of final regulations in the agenda package. She stated that the Board needs to respond to the public comment then adopt final regulations.

In response to the VDHA's comments, the Board decided:

- To keep the language permitting a dentist to employ up to 4 dental hygienists and dental assistants II in any combination because it does allow a dentist to increase the number of hygienists supervised above the current limitation to 2.
- Against adding a separate track for dental hygienists to qualify to perform the duties of DAsII because dental hygienists need to have the same training and experience.
- Against changing the requirement for certification from a credentialing organization recognized by the ADA because this language is consistent with the enabling statute.
- Against separating the provisions for DAsII in these regulations because the restructuring is being addressed in regulatory review.
- To revise the last sentence as "*the order may authorize the dental hygienist to supervise a dental assistant performing duties delegable to dental assistant I*" rather than delete it.
- Against amending the definition of "indirect supervision" because consistency between the definition and the body of the regulations is beneficial.
- Against reverting to current language for continuing education because "dental practice" is more inclusive of a range of courses than specifying "dentistry and dental hygiene".

The Board responded to Ms. Daniel's question about delegating etching and bonding saying that dental assistants are permitted to perform etching and bonding when the application is reversible so no change in the regulations is needed.

Ms. Reen then asked the Board to review the regulations and make any changes needed before adoption. The following changes were agreed to:

- Page 48, under the definition of “Direct supervision” – delete the phrase “*in the operatory or an area immediately adjacent to the operatory.*”
- Page 49, under the definition of “Direction” – amend to reference “*dental assistant I and dental assistant II.*”
- Page 49, under the definition of “General supervision” – amend the last sentence to read “The order may authorize the dental hygienist to supervise a dental assistant performing the duties delegable to dental assistants I.”
- Page 54, under 18VAC60-20-61.B. – the language in brackets for dental hygienists was stricken.
- Page 58, under the new # 7 – “or dental hygienists” was stricken.
- Page 60, under 18VAC60-20-230.C. – “or a dental hygienist” was stricken.

Dr. Zimmet moved to adopt the proposed regulations as amended. The motion was seconded and passed.

Adoption of Regulations for Mobile Dental Clinics. Ms. Reen said the Board needs to respond to public comment then adopt final regulations. She noted that the comment made by Dr. Dickinson for the Virginia Dental Association supports the proposed regulations. She then referred to Dr. Mix’s petition for rulemaking which requests amendment of 18VAC60-20-352 to exempt dentists whose primary focus is to deliver timely emergency dental care to adults in their home from registration. After much discussion, the Board’s response was that the amendment Dr. Mix requested is not necessary for occasional emergency visits to patients of record so long as he has fixed office and does not have a “mobile facility” or “portable operation.”

Ms. Reen then asked the Board to review the regulations and make any changes needed before adoption. The Board agreed to the following changes:

- On the third page, in 18VAC60-20-332 – section A2 and A3, deleting “*at least 10 days*” and replacing it with “*in writing*” and adding Section B to make the information required in this section available to the public.
- On the fourth page, under 18VAC60-20-352 – item number 2 to exempt emergency treatment was stricken.

Dr. Boyd moved to adopt the proposed regulation as amended. The motion was seconded and passed.

Adoption of NOIRA for Regulatory Review. Ms. Reen stated the proposed NOIRA is needed to begin the formal regulatory review process. She noted that the Regulatory/Legislative Committee is proposing to repeal the current regulations and replace them with four chapters (dentistry, dental hygiene, dental assistant and discipline) and to make changes throughout the regulations to make it easier to find and understand the rules. She also said the proposal would change the sequencing of the regulations to have those

applicable to everyday practice before the licensure provisions. Following comments in support of the proposal, Dr. Zimmet moved to adopt the NOIRA. The motion was seconded and passed.

BOARD

DISCUSSION/ACTION: **Letter from Dr. Carter.** Dr. Levin advised this letter was provided as information only.

Public Comment. Dr. Boyd said he shared Dr. Bennett's concerns about advertising and would like for the Board to address it. Mr. Casway noted that free speech protections have to be considered as well as the fact that complaints are coming from other dentists and not from the public. Ms. Reen stated that Dr. Bennett's complaints have been investigated and addressed. She said that advertising cases are usually addressed with an advisory letter or a confidential consent agreement so the cases rarely rise to the level for public information. Ms. Reen reminded the Board that regulatory review provides the opportunity to amend and develop policies in this area.

REPORT ON CASE ACTIVITY:

Mr. Heaberlin reported on the Board's FY2010 second quarter disciplinary performance on patient care cases noting that the:

- Clearance rate was 83%,
- Case load over 250 business was 8%, and
- Case closed within 250 work days was 97%.

He went on to report that:

- 164 cases were received from Enforcement in the second quarter and 172 were closed for a total clearance rate of 105%.
- the 172 cases were closed as follows:
 - No Violation/Undetermined – 88 cases
 - No Violation / Advisory Letter 66 cases (license was lapsed for 30 days or less)
 - Violation / IFC, PHCO, Formal – 16 cases
 - Violation / CCA – 2 cases
- Currently there are 8 cases over 250 days with four scheduled for informal conferences, two with pending CCAs, one was heard at a Formal Hearing on March 11 and the other is at the Administrative Proceedings Division.

He discussed billing and fraud cases, asking that the entire file be reviewed and that all documents be considered to determine if fraud has occurred. He advised that the Board does have the authority to sanction licensees for unprofessional conduct that is likely to defraud or to deceive the public or patients.

EXECUTIVE DIRECTOR'S REPORT/BUSINESS:

Ms. Reen reported that:

- applicants for general dental and dental hygiene licenses may now begin the application process on license.

- current estimates show that the Board should be about \$400,000 in the black at the end of this fiscal year so a fee increase does not need to be undertaken at this time. She also noted that now month to month cash flow was being monitored.
- work is underway on BRIEFS, the periodic publication discussed by the Executive Committee. She noted that Dr. Hall and Ms. Powers were meeting after the Board to review the draft. She noted that the first edition recaps the actions taken in 2009 and that future editions should follow at six month intervals.

Dr. Boyd asked if the Board could provide risk management and record keeping courses and charge a fee to generate revenue. Mr. Casway stated there is no statute that allows the Board to do so.

**BOARD COUNSEL
REPORT:**

Mr. Casway stated that he had nothing to report.

ADJOURNMENT:

With all business concluded, the meeting was adjourned at 2:00 p.m.

Jeffrey Levin, D.D.S., President

Sandra K. Reen, Executive Director

Date

Date